

Massachusetts Water Pollution Abatement Trust
Office of the Treasurer and Receiver-General
Executive Office for Administration and Finance
Department of Environmental Protection



Application for Financial Assistance
Drinking Water State Revolving Fund
Construction Stage

March 2006

Department of Environmental Protection
Bureau of Resource Protection
One Winter Street
Boston, Massachusetts 02108-4747

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Introduction

Chapter 275 of the Acts of 1989, as most recently amended by Chapter 78 of the Acts of 1998, (the "Act") established the Drinking Water State Revolving Fund loan program in Massachusetts contemplated by Title XIV of the Amendments to the federal Safe Drinking Water Act (the "SDWA"). It further created the Massachusetts Water Pollution Abatement Trust (the "Trust") to implement the program. The Trust, together with the Department of Environmental Protection, is authorized under the Act to make loans to Public Water Suppliers ("PWS") to finance the costs of eligible drinking water protection projects. In order to receive a loan, a potential borrower must file an Application for Financial Assistance with the Department of Environmental Protection ("Mass DEP"), Bureau of Resource Protection ("BRP"). Once Mass DEP has approved the Application, it will forward a Project Approval Certificate to the Trust. The Trust will then be authorized to fund the loan, subject to the availability of funds and subject to review by Mass DEP and the Trust of financial information contained in the Application and development of terms and conditions for the loan.

Eligible projects will be determined in accordance with the priority lists established annually by Mass DEP. ***A project must appear on the current Mass DEP Intended Use Plan project listing to be eligible to apply for financial assistance.*** Applications for loans will be reviewed in accordance with the provisions of 310 CMR 45.00 (Appendix A).

This package includes the Application Forms, Instructions and other information relative to supporting documentation required to be submitted as part of the Application. Do not submit the instructions with the Application. Applicants should note that neither the filing of an Application nor issuance by Mass DEP of a Project Approval Certificate will constitute a binding commitment of the Trust or Mass DEP to make a loan. Binding commitments, subject to the availability of funds, will be issued by the Trust after review of the financial information contained in the Application.

The Division of Municipal Services has commenced implementation of a number of changes designed to speed up the process of moving along construction contracts funded through the SRF program. The major change that we are announcing now relates to the Permission to Advertise letter that we now issue. In the past we have given the formal approval to the less than fully developed draft project manual and then required that all changes or additions to the draft project manual be submitted as revised pages/plans and directed that the as-bid version not be submitted to Mass DEP. Our new procedure eliminates this past practice.

We will now review the draft project manual and when it is determined to be sufficiently developed, will advise the applicant that they can go ahead and finalize the project manual, incorporate our comments if any, and immediately commence with bidding. Mass DEP is to be added to the list of bid document holders and provided a copy of the as-bid project manual when it is first available and provided addenda in the same time and manner as provided to all other holders of the as-bid documents. Mass DEP will review addenda as they are issued and will notify the consultant prior to bid opening if there are any issues of concern. There is a presumption that the addenda are approved unless one hears otherwise.

When Mass DEP issues its authorization to award letter following the bid result review, Mass DEP will also issue its approval of the as-bid project manual and addenda. The applicant can then submit to Mass DEP to fulfill the requirement of submitting an executed contract either those pages that are needed to be completed and inserted into an as-bid version to form the executed contract (and the department will insert them into its as-bid set) or it can submit a complete copy of the executed project manual, whichever the applicant decides. Should you have any questions or suggestions on this new procedure, please contact Jack Hamm at 617-292-5883 or Don St. Marie at (617) 292-5709 for resolution.

PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE BEST CURRENT INFORMATION ANTICIPATED TO BE NEEDED BY Mass DEP AND THE TRUST TO REVIEW AND APPROVE YOUR PROJECT. PLEASE CONTACT Mass DEP PRIOR TO SUBMISSION OF THIS APPLICATION.

General Information

Please complete all parts of this application; incomplete or incorrect applications may delay review.

1. *Use of This Application* - This is an application form for financial assistance from the Massachusetts Water Pollution Abatement Trust's State Revolving Fund (SRF) Program. The Drinking Water SRF Program is a financing assistance program for the construction of drinking water projects. As set forth in the Calendar Year 2005 Project Priority List/Intended Use Plan, funding for design projects has been eliminated for Calendar Year 2005. This form is to request subsidized loan assistance and/or to request refinancing of debt obligations incurred by the local governmental unit for the planning or construction of water pollution abatement projects. Local governmental units interested in receiving a SRF loan must complete and return this application.
2. *General Eligibility* - A project must meet the eligibility criteria of the SRF program in order to be eligible for financial assistance under the SRF Program. (See 310 CMR 45.04 and 45.07.)
3. *Deadlines*- Please keep in mind three important deadlines: A vote on the local appropriation by the City Council, Town Meeting or Water District should be scheduled far in advance of the June 30, 2006 deadline. A complete application must be submitted by October 15, 2006. Construction must commence within 6 months of issuance of the Project Approval Certificate by Mass DEP (this will usually mean by June 30, 2007).

4. *The Application Consists of Three Parts and a Checklist:*

Part I - General information about the applicant and the project, and an applicant certification statement.

Part II - Project specific data with supporting documentation.

Part III - Supplemental Requirements.

Loan Application Checklist - The checklist must be completed and submitted with the application. Mass DEP recommends that the application be assembled in a 3-ring binder, with inserts for each of the applicable items.

5. Please refer to the instructions for each section to determine which types of additional information are required for submission with the application. Mass DEP may require other supporting information or documentation in addition to that requested in this application.
6. *Plans and Specifications* – Plans and specifications may be submitted prior to submitting the other parts of the application. Early submittal will help expedite Mass DEP's review of the project. In any event, plans and specifications must be submitted no later than the application due date, and the loan application is not complete until they have been submitted.
7. *Submission* – Please submit an original signed application (**including the loan application checklist**) to:

Steven McCurdy
Division of Municipal Services
Massachusetts Department of Environmental Protection
One Winter Street, 5th Floor
Boston, Massachusetts 02108-4747
(617) 292-5779

Instructions for Part I - Applicant Information Section

1. Provide the legal name and the PWSID Number of the eligible borrower (Public Water Supplier) which will undertake the proposed project. If the applicant is not a municipality provide information regarding the entity which will be responsible for executing contracts and documents.

List the applicant's Department of Revenue (DOR) identification Number (this is the I.D. number used on all state revenue aid programs).

List the applicant's Federal Employer Identification Number (FEIN).

Authorized Representative - (*Checklist Items 3 and 4*) List the name, title, complete address, and telephone and fax numbers of the authorized representative. The application must contain a resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairman of the Board of Water Commissioners, Board of Selectmen, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Board of Selectmen or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office. For water districts, provide the requisite authorization of the governing board.

The Authority to File statement must be certified. This is accomplished by either a certification at the bottom of the authority to file or by submitting a separate certifying statement. Suggested forms for Authority to File and Certifying Authority to File are included in **Appendix B**.

In the event the authorized official is replaced while the project is still active, a certified statement naming the new incumbent and the effective date of appointment must be submitted. It is for this reason that it is recommended the Authority to File name only an office or position (Mayor, City or Town Manager, Chairman of the Board of Water Commissioners, Chairman of the Board of Selectmen, etc) so when there is a change in the Authorized Representative, only a new Certifying Authority to File needs to be submitted.

2. If an individual other than the Authorized Representative will serve as the Applicant's contact person for day-to-day management of the project, provide that person's name, address, and telephone and fax numbers.
3. Provide the name and Federal Employer Identification Number (FEIN) of the engineering firm, contact person, address, and telephone and fax numbers.
4. List the project's ID number and name from the current DWSRF Priority List/Intended Use Plan, and provide a brief description of the planned project.
5. If the project is serving more than one municipality or water district, list all municipalities involved and any PWSID numbers, as applicable.
6. Indicate the amount of financial assistance you are requesting.
7. **Local Appropriation** - (*Checklist Item 5*) The applicant must demonstrate that sufficient funds are available to cover the total (both eligible and ineligible) project costs. This is accomplished by means of Town Meeting, City Council, Water Supply District, or other appropriate action. Recommended authorizing language is included in **Appendix C**. Local bond counsel should be consulted for exact language.

Important points to remember to include in any authorizing language:

- a. Note that the applicant can borrow from the Massachusetts Water Pollution Abatement Trust in accordance with Chapter 29c, as amended, of the General Laws.

- b. The resolution must be certified.
 - c. It must denote who can act on behalf of the applicant to file for and accept financing.
 - d. It must specifically state the project(s) being authorized.
8. Check **ALL** forms of financial assistance the applicant is requesting.
 9. The application certification must be signed by the authorized representative designated in item 1 above. **Please review carefully the 13 conditions (in Part I) with which construction projects financed through the SRF must comply.** Failure to meet these conditions may preclude the Department's approval of the project.
 10. Describe the environmental/public health benefits of the project. Examples include elimination of MCL violations, providing emergency connections for neighboring communities, etc.

IMPORTANT NOTE

It is no longer necessary for the application to contain the prior three years of audited financial statements that comprised Section II in last years and the previous years applications.

Instructions for Part II - Project Section

1. **PLANS & SPECIFICATIONS** - One copy of the final engineering plans and specifications for each contract should be submitted as soon as possible, but no later than the date the application is submitted. (Please note that this submittal is in addition to plans and specifications provided to the Mass DEP Regional Office in conjunction with the Drinking Water Program permit application.) Plans and specifications must be consistent with the Mass DEP "Guidelines for the Preparation of Plans and Specifications", and a copy of the Plans & Specifications Checklist contained in the Guidelines must be included with the submittal. The comments of other interested parties, such as Mass DEP regional offices, are to be incorporated into the documents. Applicants are encouraged to submit the final plans and specifications as early as possible to the same address noted above (Page 2 above).
2. **DETAILED PROJECT SCHEDULE** - The application must contain a realistic schedule outlining important milestones in the construction program, including bidding requirements. Since the Trust will sell its bonds based on the proposed schedules, it is critical that this schedule be as accurate as possible. Please include month, day, and year.
3. **SUMMARY OF COSTS** - Provide detailed construction bid sheets from the specifications showing the engineer's estimate of construction cost, including eligibility. Eligibility must be consistent with the Mass DEP "Policy on Eligible Project Costs" (**Appendix J.**) Please note that a contingency of 10% of the estimated construction contract cost should be included in the estimate prior to receiving bids. The contingency will be reduced to 5% when based on actual bid amounts. If the project includes costs for police traffic details, provide an explanation of the need and submit a traffic management plan that should include a detailed breakdown of the man-hour requirements to implement. The traffic management plan should be developed in conjunction with the local communities traffic management officer. The Department reserves the right to require that the traffic management plan be certified by the appropriate police official should the estimated needs appear to be excessive. (Note that costs for police traffic details are considered an administrative cost of the LGU, and are not to be included in the construction contract.).

Instructions for Part III - Supplemental Requirements (Items Nos. 6 through 24 on Checklist)

6. LAND TITLE/EASEMENTS – The applicant must demonstrate that all required land, easements, or real property have been obtained, bona fide options taken, or condemnation proceedings initiated. An attorney must prepare a document certifying the ownership or easement rights to all property. A sample form is included in **Appendix D**.
7. PROJECT EVALUATION REPORT – Include a copy of the Department’s letter approving the PER. As provided by 310 CMR 45.08 every DWSRF project must be the result of an approved PER.
8. INTERMUNICIPAL AGREEMENTS - If the project will serve two or more municipalities, or one municipality's project must connect to another's water system, the applicant must submit an executed intermunicipal agreement or another legally binding document covering financing, construction, and operation of the proposed treatment works. The requirement may be waived if:
 - a. Evidence of historic relationships for other services between the parties exist; or
 - b. The financial strength of the applicant is adequate to continue the project, even if one of the proposed communities fails to participate.
9. USER CHARGE SYSTEM - Prior to the award of financial assistance, the applicant's user charge system must be approved by DEP. If such a system is already in effect, then it must be shown that the system is adequate and is being enforced. In addition, the system must be in effect by the time the treatment works are placed in operation.
10. Mass DEP DRINKING WATER PROGRAM PERMIT - Prior to the award of financial assistance, the applicant must obtain all Mass DEP Drinking Water Program permits and approvals applicable to the proposed project.
11. CONSTRUCTION PERMITS/ORDER OF CONDITIONS/CERTIFICATES/ LICENSES - If applicable, the following construction permits must be filed and documented in the loan application. For the purposes of awarding financial assistance, the application for the permit(s) is acceptable, however the final permit(s) must be incorporated into the specifications prior to Mass DEP authorization to advertise:
 - a. U.S. ARMY CORPS OF ENGINEERS (404 Permit) - An Army Corps of Engineers Section 404 Permit is required if a structure is to be located in, or if excavation, discharge of dredged or fill material will be performed in waters of the United States. For projects, this may involve the excavation and backfilling associated with lines crossing a waterway or wetland, outfall pipes, and any fill material (including rip-rap) used for bank stabilization or any fill associated with treatment facilities.
 - b. Mass DEP PERMITS AND APPROVALS
 - (i) Mass DEP DIVISION OF WATERWAYS (Chapter 91 Permit) - A Chapter 91 Permit must be obtained for the construction of any structure or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below the high water mark of any tidal areas or in or over any great pond or any river or stream. In addition, a permit is also required if it is proposed to either dredge in the tidal areas or dispose of any dredged material therein. For further guidance on this issue, please refer to 310 CMR 9.00.
 - (ii) WATER QUALITY CERTIFICATE - Any project requiring a federal or state license or permit to conduct activities which may result in a discharge to waters of the United States must be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed facility. State certification must be obtained before a license or permit may be issued.

Such activities include NPDES regulated discharges, dredge and fill operations, and the construction of structures in water. For further guidance on this issue, please refer to 314 CMR 9.00.

(iii) SEWER EXTENSION PERMIT – Any project for the extension of a municipal sewerage system requires a permit in accordance with 314 CMR 7.00.

(iv) Mass DEP DIVISION OF AIR QUALITY (Permit) - Any proposed new or modified source of air contaminants, such as carbon monoxide, hydrocarbons, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, and any pollutant covered by the National Emission Standards for Hazardous Air Pollutants promulgated by EPA, must be approved. For further guidance on this issue, please contact the Division of Air Quality Control and refer to 310 CMR 7.00.

- c. LOCAL CONSERVATION COMMISSION (Order of Conditions) - Under Chapter 131, Section 40, the applicant must file a notice of intent with the local conservation commission if construction is to occur within 100 feet of wetlands or floodplains. Note that both natural and man-made coastal dunes are included within the definition of wetlands.
 - d. MASSACHUSETTS HIGHWAY DEPARTMENT PERMIT (MHD Permit) - A permit must be obtained from the regional MHD office for any project which crosses or does any type of work within the boundaries of a state highway.
 - e. MBTA/CONRAIL LICENSE - A license is required if the project will impact property owned by either the MBTA or CONRAIL. The appropriate agency should be contacted for further information.
 - f. OTHER STATE/FEDERAL PERMITS - Depending upon the project, other permits may be required and must be filed for.
12. CZM CONSISTENCY CERTIFICATE - The issuance of federal permits for activities located within the coastal zone or affecting this zone requires that the applicant obtain a certification that the activities are consistent with the state coastal zone policy. For further guidance on this issue, contact the Office of Coastal Zone Management.
13. MEPA COMPLIANCE - Prior to the award of financial assistance, an Environmental Notification Form (ENF) must be filed with the MEPA Unit of EOEa if the project exceeds the review thresholds contained in 301 CMR 11.00. After a review period, the Secretary of EOEa will decide whether an Environmental Impact Report (EIR) is required or not. If not, then the project can proceed, subject to any conditions that MEPA may place on the project. If an EIR is required, it must be completed by the proponent and submitted to the Secretary for an additional public comment period. Once the comment period has expired, the Secretary will render a decision on the final EIR. If it is found acceptable, and once the 60-day legal challenge period expires, the project can then proceed. The application must contain documentation that the requirements of MEPA have been satisfied.
14. FLOOD INSURANCE PARTICIPATION - If the project involves structures within a flood hazard area, the applicant must furnish evidence that it is either participating in the flood insurance program or a letter of intent that it will obtain the required insurance both during construction and for the useful life of the project.

Insurable structures are defined as being \$10,000 or more in value, and are new or reconstructed surface structures which are walled and roofed, such as a pump station or treatment plant control building. Facilities such as sewers, which are not likely to be damaged by flooding, are not eligible for insurance.

15. MASSACHUSETTS HISTORICAL COMMISSION (Approval) - A construction loan cannot be made until all work required by the Massachusetts Historical Commission (MHC) has been completed and approved by them in accordance with 950 CMR 71.00. The loan may be conditioned, in some instances, to require recovery of archaeological material during construction when a sensitive area will be affected and no reasonable alternative is available. Documentation that the requirements of MHC have been met must be included with the application.
16. LEGISLATION (IF NEEDED) - There are several instances where special legislation from the Massachusetts General Court could be required prior to the initiation of construction. Examples include:
 - a. Construction in dedicated conservation land, including park land;
 - b. Construction by one community within the municipal boundaries of another;
 - c. Formation of a water supply district.
 - d. Easements for construction in state owned land.
17. PROFESSIONAL SERVICES AGREEMENT - The application must contain draft agreements for all professional services which clearly outline the duties and responsibilities of the applicant and the contractor. The agreement will include, but not be limited to:
 - a. Scope of work for the various tasks, including basic, resident, and special construction services.
 - b. Time of Completion.
 - c. For certain water pollution abatement facilities, start-up and post-construction services,

For professional services agreements receiving SRF subsidy, the following requirements apply:

- a. MODEL SUBAGREEMENT CLAUSES - The provisions of **Appendix F** are to be made a part of all professional services agreements.
- b. SRF 90-01 COST/PRICE SUMMARY - The request for financial assistance for professional services in excess of \$25,000 shall include a breakdown of cost and price considerations in accordance with the provisions. The following items will be included:
 1. Direct salary costs by job category.
 2. Provisional overhead rate.
 3. Other direct costs (travel, expenses, subcontracts, etc.)
 4. Profit.

The form (**Appendix G**) must be signed by two parties; first by the contractor and then by the applicant.
- c. DETAILED FEE BREAKDOWN - All fees shall be broken out by task (shop drawings, resident services, start-up, etc.), job category (vice president, project engineer, draftsman, etc.), and cost.
- d. SUBCONTRACTS WHERE APPLICABLE - All lower tier subcontracts in excess of \$25,000 must be submitted in draft form with the application, including an executed **BRP 90-01** form, and a detailed fee breakdown.
- e. MINORITY/WOMEN BUSINESS ENTERPRISE - Applicants receiving assistance must make positive efforts to use minority and women owned businesses for professional services. Such efforts should achieve a goal of 4.65% participation for minority business (MBE) and 16.03% participation for women owned business (WBE) but, at a minimum, should allow these sources the

maximum feasible opportunity to compete for subagreements to be performed using state trust monies. Sample forms are provided in **Appendix H**.

- f. CHAPTER 233 - COMPLIANCE STATEMENT ON MA TAXES - A statement must be signed by the consultant engineer(s) for the project that states that the engineer(s) is in compliance with Massachusetts tax laws. A sample statement is provided in **Appendix I**.
18. MAP OF PROJECT - Each application must be accompanied by a project map, denoting the drinking water facilities and/or the site plan of the treatment plant. It should delineate:
 - a. Jurisdictional Boundaries.
 - b. Existing versus proposed facilities.
19. BASIC DESIGN DATA - A detailed copy of the basic design data for the drinking water facilities must be included.
20. PROVISION FOR O&M PROGRAM - The applicant must clearly demonstrate that it has the capability to properly operate and maintain the drinking water protection facilities. To this end, an operation and maintenance manual (O&M) must be prepared for all water treatment plants and which describes the equipment, develops staffing requirements, and outlines the procedures necessary to keep the facilities operating in an optimum fashion. A provision for the preparation of an O&M manual should appear in the Professional Services Agreement.
21. DISPLACEMENT OF PERSONS OR BUSINESSES - The application must state whether this project has caused, since January 1, 1971, or will cause, the displacement of any individual, family business, or farm as required by the Uniform Relocation and Real Property Assistance Policies Act of 1970 (PL 91-646).
22. PLAN OF OPERATION - Prior to the award of financial assistance for water treatment facilities, a preliminary plan of operation must be approved by Mass DEP. By the 50% stage of construction, a final plan must be completed and approved. For further guidance on this issue, please contact the appropriate Mass DEP program manager.
23. START-UP SERVICES - For facilities, the Professional Services agreement must provide for start-up services during the first year following the initiation of operation. The extent of the services will vary depending on the size and complexity of the project. For further guidance on this issue, please contact the appropriate Mass DEP program manager.
24. POST-CONSTRUCTION SERVICES - For facilities, the applicant must notify Mass DEP in writing of the actual date of initiation of operation. During the first year following initiation of operations, the applicant will monitor the performance of the facilities. One year after initiation of operations, the applicant shall submit a report to Mass DEP outlining whether the project meets performance standards.

Part I

Applicant Information and Certification

(attach additional pages as necessary)

1. LOCAL GOVERNMENTAL UNIT (LGU)					
LGU Name:		Dept. of Revenue ID No.:		FEIN	
Authorized Representative:			Title:		
Street/P.O. Box:					
City:		State:		Zip:	
Telephone: ()		Fax: ()			

2. LGU CONTACT PERSON (if different from item 1)					
Name:		Title:			
Mailing Address (if different from item 1)					
Street/P.O. Box:					
City:		State:		Zip:	
Telephone: ()		Fax: ()			

3. ENGINEER OR CONSULTANT FIRM					
Firm/Agency:		FEIN			
Contact Person:					
Mailing Address					
Street/P.O. Box:					
City:		State:		Zip	
Telephone: ()		Fax: ()			

4. DWSRF PROJECT IDENTIFICATION NUMBER	
ID No. from Current Priority List:	
Project Description:	

5. MUNICIPALITIES SERVED BY TREATMENT WORKS (Name / Permit Numbers)	

6. AMOUNT OF ASSISTANCE REQUESTED
\$

7. LOCAL APPROPRIATION		Amount		Available Balance	
Bonds	\$			\$	
Cash	\$			\$	
Other	\$			\$	

8. TYPE OF FINANCIAL ASSISTANCE REQUESTED
--

(Check as applicable)		Loan for new project	
		Refinancing of debt incurred	
If refinancing, list amount of outstanding debt and maturity dates.			
Amount	Date of Issue	Maturity Date	

9. CERTIFICATION

In submitting this Application to the Mass DEP, the Applicant certifies that it shall comply with the following Project related conditions, and understands that the Applicant's non-compliance with one or more of these conditions may preclude the Mass DEP's issuance of a Project Approval Certificate or entry into a Project Regulatory Agreement.

(1) The Applicant shall obtain the Mass DEP's prior written approval to: (a) advertise any Invitation To Bid or Request for Proposals to procure contracts for the Project; and (b) award any contracts for the Project.

(2) The Applicant shall comply with the Affirmative Action and Minority/Women Business ("M/WBE") requirements in the Mass DEP's Regulations. The Applicant shall comply with the Civil Rights Act of 1964, 42 USC s.2000(a) et seq., as amended, and all Executive Orders and regulations promulgated thereunder. The Applicant shall sign and deliver to the Mass DEP a Nondiscrimination in Employment form. The Applicant shall ensure that any prime contracts or subcontracts for services, construction, goods or equipment for the Project contains the applicable M/WBE utilization goals: construction [MBE – 5.30%, WBE – 4.40%]; services [MBE – 4.65%, WBE – 16.03%]; goods [MBE – 7.89%, WBE – 14.82%]; and equipment [MBE – 2.48%, WBE – 7.51%]. The applicable M/WBE goals depend on the predominate character of the specific contract being procured by the Applicant, as determined by the Mass DEP. The Applicant shall ensure that all vendors submitting bids or proposals as prime contractors or subcontractors in response to Project-related procurements complete the Commonwealth of Massachusetts Vendor Information Form ("VIF"). The Applicant shall also be responsible for submitting the completed VIFs to the Mass DEP when it requests the Mass DEP's approval to award the contract.

(3) The Applicant shall at all times provide and maintain competent and adequate resident supervision and inspection of the Project under the direction of a licensed professional engineer. Such resident site engineer shall ensure that the implementation of the Project conforms with the approved plans and specifications, and shall certify to the Applicant and the Mass DEP at the completion of the Project that the implementation of the Project is in accordance with the Mass DEP approved final plans and specifications for the Project. The Applicant also agrees to submit an executed copy of the contract for resident site engineering services to the Mass DEP within sixty (60) days of the date of the contract award. The Applicant understands that no payments for the Project will be processed until such contract has been submitted to the Mass DEP.

(4) Prior to receiving final payment for the Project, the Applicant shall certify to the Mass DEP that the Project has been completed and performed in accordance with the Project Regulatory Agreement.

(5) The Applicant shall be solely responsible for the implementation and completion of the Project in accordance with the Mass DEP approved plans and specifications and Department permit(s) issued for the Project, and for the economical and efficient operation and administration of the Project. The Applicant's responsibilities include retaining sufficient operating personnel and conducting operational tests and other needed evaluations to ensure the economical and efficient operation and administration of the Project.

(6) The Applicant shall establish accounts for the Project which shall be maintained in accordance with generally accepted government accounting standards.

(7) The Applicant understands that if the Mass DEP issues a Project Approval Certificate for this project, such action does not constitute the Mass DEP's sanction or approval of any changes or deviation from any applicable state regulatory or permit standards, criteria, or conditions, or from the terms or schedules of state enforcement actions or orders applicable to the Project.

(8) The Applicant shall maintain all Project records for three years after the issuance of final payment or until any litigation, appeal, claim, or audit that is begun before the end of the three-year period is completed and resolved, whichever is longer.

(9) The Applicant agrees to provide any Project information and documentation requested by the Mass DEP.	
(10) The Applicant shall obtain fee simple title or such other property interest in the Project site, including any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Project site for the purposes of implementation and operation of the Project for its estimated life.	
(11) Any proposed change in Project-related contracts which substantially modifies the Project initially proposed shall be submitted to the Mass DEP for prior approval.	
(12) The Applicant's implementation of the Project, including the procurement of related contracts, shall comply with all applicable requirements of state and local laws, ordinances, by-laws, rules and regulations.	
(13) Mass DEP representatives shall have access to Project work whenever it is in preparation or progress, and shall be provided proper facilities for such Project access and inspection. All of the Applicant's construction and other relevant contracts shall contain the above provision.	
<p>To the best of my knowledge and belief, data provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant. Furthermore, the applicant certifies that it possesses the legal authority to apply for the loan, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.</p>	
Name of Representative (Type)	Title
Signature of Representative	(Date)

Part II

Project Section Information

1. Plans and specifications		
Contract Number	Contract Name	Submittal Date

2. Construction Schedule (estimated dates – mm/dd/yy)					
Contract No(s).					
Bid Advertisement					
Contract Award					
Contract Completion					
Calendar Days to Complete					

3. Summary of Costs *	Total Costs	Eligible Costs
A. Construction (Use bid proposals) List Contract Name or Number		
Construction Contingency (max. 10% pre-bid; 5% post-bid)		
Sub Total		
B. Construction Services		
a. General Supervision		
b. Resident Engineering		
c. Testing of Materials		
d. As Built Plans		
e. Operation and Maintenance Manual		
f. Start up Supervision		
g. Other:		
Sub Total		
C. Other Costs		
a. Police – Traffic Detail		
Sub Total		
TOTAL		

Date of Estimate: _____

ENR Construction Cost Index: _____

*** Attach detailed construction bid sheets with engineer's estimate.**

**Drinking Water State Revolving Fund Program
Loan Application Checklist
CONSTRUCTION STAGE PROJECTS**

Please use this checklist to confirm that all required forms and supplemental information have been included with the application, and submit the checklist with your application.

Item	Included in this package (check)	Previously submitted (date)	Not applicable (check)
1. Parts I, II, and III			
2. Plans & Specifications			
3. Authority to File			
4. Certifying Authority to File			
5. Local Appropriation			
6. Title / Easements (Legal Opinion)			
7. Project Evaluation Report			
8. Intermunicipal Agreements			
9. User Charge System (310 CMR 45.11(2)(b))			
10. Mass DEP Drinking Water Program Permit(s)			
11. Other Construction Permits			
a. US Army Corps of Engineers			
b. Mass DEP			
- Waterways			
- Water Quality Certification			
- Sewer Extension/Connection			
- Air Quality			
c. Local Conservation Commission (Conditions)			
d. MA Highway			
e. MBTA / Railroad			
f. Other State/Federal Permits Required			
12. Coastal Zone Management Consistency Certificate			
13. MEPA Compliance			
14. Flood Insurance Participation			
15. Historic Preservation			
16. Legislation			
17. Professional Services Agreements			
a. Requirements When Receiving Financial Assistance			
b. Cost / Price Summary			
c. Detailed Fee Breakdown			
d. Subcontracts			
e. Minority / Women Business Enterprise			
f. Chapter 233 - Statement on MA Taxes			
18. Map of Project			
19. Basic Design Data			
20. Provision for O & M Program			
21. Displacement of Persons or Businesses			
22. Plan of Operation			
23. Start-up Services			
24. Post-Construction Services			

Appendix A

310 CMR 45.00

Drinking Water State Revolving Fund Regulations

310 CMR: 45.00: DEP SELECTION, APPROVAL AND REGULATION OF DRINKING WATER PROJECTS RECEIVING FINANCIAL ASSISTANCE FROM THE STATE REVOLVING FUND

Section

- 45.01: Authority and Effective Date
- 44.02: Purpose and Applicability
- 45.03: Definitions
- 45.04: Eligible Projects
- 45.05: Priority System
- 45.06: Project Selection Criteria
- 45.07: Eligible Project Costs
- 45.08: Project Evaluation Report
- 45.09: Environmental Review and Federal Cross-Cutter Requirements
- 45.10: Affirmative Action and Minority/Women Business Enterprise Requirements
- 45.11: Project Approval and Regulation

45.01: Authority and Effective Date

310 CMR 45.00 *et seq.* has been adopted pursuant to St. 1998, c.78, M.G.L. c. 29C, M.G.L. c. 21, s. 27A, and M.G.L. c. 111, s.160, and shall take effect upon promulgation.

45.02: Purpose and Applicability

310 CMR 45.00 sets forth the Department's authority and responsibilities to select, approve and regulate drinking water projects receiving financial assistance from the Drinking Water State Revolving Fund (the "DWSRF").

310 CMR 45.00 does not apply to the use of set-asides by the Department and the Trust, which is addressed in the pertinent portion of the Intended Use Plan ("IUP") submitted by the Department and the Trust to EPA on an annual basis after public review and comment. In the event that the set-aside portion of the IUP allocates funding for loans to systems to acquire land or conservation easements or to implement source water protection measures or to implement recommendations in source water quality protection partnership petitions submitted to the Department, the project selection criteria for such loans will also be subject to public review and comment as a component of the Intended Use Plan. The Department, reserves, however, the right to use relevant requirements and procedures contained in 310 CMR 45.00 in its selection, approval and administration of projects receiving loans pursuant to the set-aside portion of the IUP.

The Department may issue supplemental policies, guidelines, guidance documents and/or administrative procedures to assist in its implementation and administration of 310 CMR 45.00 and its use of set-asides.

45.03: Definitions

For the purposes of 310 CMR 45.00 *et seq.*, the following terms shall have the meaning set forth in 310 CMR 45.00 unless the context clearly requires otherwise.

Act: St. 1998, c.78, and as it may be further amended from time to time.

Community Water System: As defined in 310 CMR 22.02 of the Department's Drinking Water Regulations, a community water system is a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Cost: Any or all costs, whenever incurred, approved by the Department in accordance with M.G.L. c. 21, s.27A, of carrying out a drinking water project, including, without limiting the generality of the foregoing: the costs for planning, preparation of studies and surveys, design, construction, facilities, improvement and rehabilitation, acquisition of real property, personal property, materials, machinery or equipment, start-up costs, demolitions and relocations, reasonable reserves and working capital, interest on loans, local governmental obligations and notes in anticipation of thereof prior to and during construction of such project or prior to the date of such loan, if later, administrative, legal and financing expenses, and other expenses necessary or incidental to the aforesaid.

Department: The Department of Environmental Protection.

Drinking Water Project: Any project of a type or category which the Department has determined, consistent with guidance issued by EPA in accordance with the SDWA, will facilitate compliance with national primary drinking water regulations under section 1412 of the SDWA or otherwise significantly further the health protection objectives of the SDWA or the Department's Drinking Water Regulations at 310 CMR 22.00.

Drinking Water Regulations or 310 CMR 22.00: The Department's regulations governing the approval, use and operation of drinking water sources and public water systems in compliance with M.G.L. c.111, s.160 and other applicable state laws.

Eligible Borrower: Any local governmental unit or other community water system which is authorized to own, operate, finance or otherwise implement a drinking water project.

Federal Cross-Cutters: Federal laws and authorities that apply by their own terms to projects receiving federal financial assistance such as the federal SRF. Such federal cross-cutters include, but are not limited to, environmental laws and authorities such as the Clean Air Act, Safe Drinking Water Act, Clean Water Act, Endangered Species Act, Coastal Zone Management Act, Wild and Scenic Rivers Act and the National Historic Preservation Act of 1966, and economic and miscellaneous authorities such as the procurement and contractor requirements associated with financial assistance programs under the Safe Drinking Water Act, Clean Water Act and Clean Air Act.

Grant Equivalency or Financial Equivalent of a Grant: The standard measure used by the Department and the Trust to determine the amount of subsidy applicable to the eligible costs of a project under the loan in accordance with St. 1998, c.78.

Intended Use Plan or IUP: An annual plan submitted by the Trust to EPA which identifies the intended use of the amounts available to the Fund as determined from time to time by the Trust and derived from the federal capitalization grant, state match amounts, loan repayments, investment earnings and any other moneys deposited by the Trust available to fund projects eligible for funding under St. 1998, c.78. The Intended Use Plan includes a listing of projects to receive financial assistance from the Fund, the distribution and use of the funds for set-aside activities, and a description of the short and long term goals for the use of project and set-aside funds.

Intended Use Plan Project Listing: Those projects identified by the Department for inclusion on the fundable portion of the calendar year priority list pursuant to 310 CMR 45.05(2).

Loan: Any form of financial assistance subject to repayment which is provided by the Trust to an eligible borrower. A loan may provide for planning, construction, bridge or permanent financing.

Loan agreement: Any agreement entered into between the Trust and an eligible borrower pertaining to a loan or the purchase and delivery of local governmental obligations or other instruments evidencing or securing a loan.

Loan commitment: A written commitment by the Trust to make a loan to a local governmental unit or public water system to finance a project approved by the Department on terms consistent with the Department's Project Approval Certificate.

Local government unit: Any town, city, district, commission, agency, authority, board or other instrumentality of the Commonwealth or of any of its political subdivisions, including any regional local governmental unit as defined in M.G.L. c. 29C, s.1, which is responsible for the ownership or operation of a drinking water project and is authorized by a bond act to finance all or any part of the cost thereof through the issue of bonds.

Maximum Contaminant Level (MCL): The maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

MEPA: The Massachusetts Environmental Policy Act, M.G.L. c. 30, ss. 61 through 62H, and as may be further amended from time to time.

Project Approval Certificate: The certificate issued by the Department to the Trust approving the project and certifying those costs of the project determined by the Department to be eligible for assistance by a loan and those costs eligible for financial assistance pursuant to St. 1998, c.78.

Project Regulatory Agreement: An agreement between the Department and an eligible borrower, executed and delivered to the Trust on or prior to the date of a loan from the Trust to the eligible borrower to finance a project approved by the Department, which contains provisions relating to the Department's regulation and supervision of the project in accordance with 310 CMR 45.00.

Public Water System: A system for the provision to the public of piped water for human consumption, as defined in 310 CMR 22.02 of the Department's Drinking Water Regulations. A public water system includes a community water system.

Safe Drinking Water Act or SDWA: Title XIV of the Federal Public Health Service Act, commonly known as the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as amended.

Set-asides: The use of DWSRF federal capitalization grant funds and matching state funds, as applicable, for a range of specific activities identified in s.1452 of the SDWA to encourage source water protection and other Department drinking water program activities.

Small System: A public water system which regularly serve fewer than 10,000 persons.

Trust: The Massachusetts Water Pollution Abatement Trust established by M.G.L. c. 29C.

45.04: Eligible Projects

(1) Any drinking water project of an eligible borrower is eligible to receive financial assistance from the Trust pursuant to the Act and 310 CMR 45.00. The Department has determined that such eligible projects include, but are not limited to:

(a) Projects to address or prevent violations of the public health standards in 310 CMR 22.00 and the SDWA, including projects to come into or maintain compliance with MCLs and other requirements for contaminants with acute health effects (e.g., the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standards) and for contaminants with chronic health effects (e.g., the Lead and Copper Rule and the Disinfection Byproducts Rule), including the costs of system activities determined by the Department to constitute an effective alternative to providing treatment to come into or maintain compliance with 310 CMR 22.00 and the SDWA;

(b) Projects to replace aging infrastructure, if such projects are needed to maintain compliance or further the public health goals and requirements in 310 CMR 22.00 and the SDWA, including projects to rehabilitate or develop sources to replace contaminated sources, install or upgrade treatment or

storage facilities, and install or replace transmission and distribution pipes to prevent contamination or improve water pressure to safe levels;

(c) Projects to consolidate and/or restructure a public water system (e.g., to address a system with contaminated water supply or when a system is in noncompliance or lacks adequate technical, managerial and financial capability to maintain compliance);

(d) Land acquisition, but only if the Department determines that such land is integral to a project and necessary to meet or maintain compliance and further the protection of public health (e.g., land needed to locate eligible treatment or distribution projects);

(e) The planning and/or design for any eligible project; and

(f) Any eligible project which uses a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 45.00. The operation and maintenance costs of such projects shall be ineligible for DWSRF assistance.

(2) Unless otherwise determined by the Department consistent with the definition of "drinking water project" in 310 CMR 45.03, the following projects and activities are not eligible to receive financial assistance pursuant to 310 CMR 45.00:

(a) The construction, rehabilitation or maintenance of dams;

(b) The purchase of water rights, unless the water rights are owned by a public water system that is being purchased by an eligible borrower through consolidation as part of the eligible borrower's capacity development strategy;

(c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the treatment facility property;

(d) Laboratory fees for monitoring;

(e) Operation and maintenance costs;

(f) Projects needed primarily for fire protection;

(g) Projects for systems which the Department determines lack adequate technical, managerial and financial capability, unless the Department determines that financial assistance from the DWSRF will ensure compliance over the long term;

(h) Projects for systems in significant noncompliance, as determined by the Department, unless the Department determines that the project will enable the system to return to compliance and that the system will maintain an adequate level of technical, managerial and financial capability to maintain compliance; and

(i) Projects primarily intended solely to serve future growth.

45.05: Priority System

(1) Establishment of Calendar Year Priority List

(a) Prior to the beginning of each calendar year, the Department shall establish a single, annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 45.00.

(b) In establishing the priority list, the Department may require eligible borrowers to submit any information deemed necessary by the Department for project evaluation, including but not limited to, information which addresses the proposed project's compliance with the Intended Use Plan Project Listing criteria in 310 CMR 45.05(2) and the Project Selection Criteria in 310 CMR 45.06. The Department may establish a reasonable deadline for its receipt of such information, and may decline to evaluate and prioritize a project if the Department determines that the eligible borrower has failed to provide sufficient information.

(c) Prior to adopting the priority list, the Department shall conduct a public hearing to receive and consider public comment on the proposed list. The Department will ensure that notice of the public hearing will be published in one or more newspapers of general circulation thirty (30) days prior to the date of the hearing.

(2) Intended Use Plan Project Listing

(a) Eligible projects which the Department finds are ready to proceed and for which funds are available in the calendar year in which the priority list is established shall be placed on the Intended Use Plan Project Listing portion of the priority list. The Department reserves the right to establish an Intended Use Plan Project Listing that contains fewer projects than would use the total amount of funding available in the relevant calendar year, or, alternatively, to expand the Intended Use Plan Project Listing during the course of the relevant calendar year based on an additional allocation of available funding.

(b) The eligible borrower proposing the project must show in its application that its project meets each of the following criteria in order for the Department to place the project on the Intended Use Plan Project Listing:

1. As determined by the Department, the project's benefits to public health and/or drinking water quality, as evidenced by its ranking on the priority list, are sufficiently high to warrant its funding as a priority in the relevant calendar year;
2. The eligible borrower has already obtained its local funding authorization or otherwise committed funding for the project, or has provided a specific schedule to obtain such funding authorization or funding commitment by June 30th of the relevant calendar year; and
3. The eligible borrower demonstrates to the Department's satisfaction that its project is sufficiently advanced in its implementation such that the local governmental unit or public water system will file a complete loan application with the Department for the project by October 15th of the relevant calendar year.

A complete application includes, as applicable, approvable plans and specifications for the project and evidence that the eligible borrower has, at a minimum, filed applications for any permits or environmental reviews applicable to the project. As provided in 310 CMR 45.11(1)(b), the Department may deny any application which it determines to be incomplete.

(c) In the event that a project placed on an Intended Use Plan Project Listing fails during the course of the calendar year to meet one or more of the criteria in 310 CMR 45.05(2)(b), the project may be removed from the Intended Use Plan Project Listing and returned to the applicable priority level on the priority list. In such event, the Department reserves the right to raise one or more project(s) which are determined by the Department to be of the highest priority and which meet the criteria in 310 CMR 45.05(2)(b), consistent with available funding, to the Intended Use Plan Project Listing, provided the Department shall raise a small system project which meets the criteria in 310 CMR 45.05(2)(b) before an otherwise higher ranked project if the funding of such small system project is needed to meet the fifteen percent (15%) allocation of funds for small systems, as provided in the SDWA. Subject to the availability of funding and the project's priority, the Department further reserves the right to restore any project removed from the Intended Use Plan Project Listing for failure to meet the criteria in 310 CMR 45.05(2)(b) if the project thereafter meets those criteria prior to the end of the relevant calendar year.

(d) The implementation of some projects on the Intended Use Plan Project Listing will take place over two years or more. For such multi-year projects, the Department will limit the amount of actual funding reserved for the project on each annual Intended Use Plan Project Listing to the amount needed to fund the project for one year. In the event that a multi-year project receives a project approval certificate from the Department by the end of the relevant calendar year, the Department will reserve another annual increment(s) of funding for the project on subsequent calendar year Intended Use Plan Project Listings, subject to the availability of funding, and provided the project is implemented in accordance with the schedule in the project approval certificate, as determined by the Department. The limitation on financial assistance in 310 CMR 45.05(3) shall apply to any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(3) Limitation on Financial Assistance

(a) No eligible borrower shall receive Department approval for financial assistance from the Trust for a project or projects in a calendar year in any amount in excess of 25% of the total financial assistance authorized on the Intended Use Plan Project Listing portion of the priority list in that calendar year, including any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(b) The Department reserves the right to waive the limitation on financial assistance set forth in 310 CMR 45.05(3)(a), in whole or in part, if the Department determines that one or more projects on the Intended Use Plan Project Listing portion of the applicable priority list has failed or will fail to meet the criteria in 310 CMR 45.05(2)(b) by October 15th in the relevant calendar year, or if the Department allocates additional available funding to the Intended Use Plan Project Listing during the course of the relevant calendar year.

45.06 Project Selection Criteria

(1) Except as provided in 310 CMR 45.06(2), (3) and (4), the Department will use the evaluation criteria set forth below to determine a project's placement on the calendar year priority list. The Department, through written guidance, will assign a numerical point range to each of the evaluation criteria in 310 CMR 45.06(a) which will be used to further determine a project's placement on the priority list. Such Department guidance may also address tie breakers for projects with the same point score rating.

(a) Public Health Criteria

1. The extent to which the project will eliminate or mitigate a serious risk to public health. Relevant factors to consider may include but are not limited to:

- a. The severity of the public health problem the project is intended to address (e.g., the nature and frequency of MCL violations).
- b. The size and character of the population threatened or negatively impacted by the identified risk to public health (e.g., the number of children, the elderly or persons with pre-existing health risks served by the system), and the extent to which the project will eliminate or mitigate the public health risk to the identified population.
- c. The extent to which the project demonstrably eliminates or mitigates the identified serious risk to public health in an effective and timely manner.

(b) Compliance Criteria

1. The extent to which the project is needed to come into or maintain compliance with 310 CMR 22.00, the SDWA or other required or related federal and/or state permit(s), approvals, regulations and requirements, and the effect of compliance on public health and drinking water quality. Relevant factors to consider may include but are not limited to:
 - a. The extent to which the project is needed to ensure compliance with an existing federal or state court or administrative order.
 - b. The extent to which the project is needed to come into or maintain compliance with 310 CMR 22.00, the SDWA, or other required or related federal or state permit or approval, including the Department's approval of a new drinking water source.
 - c. The extent to which the project's maintenance of compliance with 310 CMR 22.00, the SDWA, or other required or related federal or state order, permit, approval demonstrably benefits or protects drinking water quality and/or public health (e.g., projects which upgrade or rehabilitate water treatment or distribution facilities and are designed to keep a system in compliance on an ongoing basis).

(c) Affordability Criteria

1. The extent to which DWSRF financial assistance for the project will assist systems whose service area consists of users with median household income ("MHI") of 80% or less of the state median household income for non-metropolitan areas.
2. The extent to which the cost of the project will result in increased water rates to users of the system of an eligible borrower. Relevant factors to consider may include, but are not limited to, whether the annual user charges will fall within a range of 1% to 1.75% of such users' MHI.

(d) Other Program and Implementation Criteria

1. Whether the project is to consolidate and/or restructure a public water system (e.g., to address a system with a contaminated water supply or when a system is in noncompliance or lacks adequate technical, managerial and financial capability to maintain compliance).
2. The extent to which the project implements or is consistent with one or more current watershed management plans (e.g., DEP basin plans) and/or watershed protection plans (e.g., local Zone II land use controls, comprehensive conservation management plans), or otherwise effectively addresses a watershed priority, as determined by the Department.

3. The extent to which the project is consistent with local and regional growth and/or infrastructure plans, and promotes the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic (re)use, as provided in Executive Order 385 (Growth Planning).
 4. Whether the project constitutes or is a component of a multi-community or regional approach to addressing the identified public health or drinking water quality problem.
- (2) Since certain of the Project Selection Criteria in 310 CMR 45.06(1) do not apply to eligible planning and/or design projects, the Department will limit its evaluation of such projects to the relevant criteria.
 - (3) In establishing the calendar year priority list pursuant to 310 CMR 45.04(1), the Department may:
 - (a) identify project categories and/or watersheds as funding priorities in a particular calendar year, consistent with the Project Selection Criteria in 310 CMR 45.06(1); and
 - (b) modify and/or further specify the factors or point system to be used to evaluate the extent to which a project meets the Project Selection Criteria in 310 CMR 45.06(1), including any project or program priorities identified by the Department as a funding priority in a particular calendar year pursuant to 310 CMR 45.06(3) and (4).
 - (4) Before finally adopting any substantial modification to the Project Selection Criteria and/or the related point system, the Department will notice such modifications in the Environmental Monitor and to the regulated community and provide an opportunity for public comment for a period of not less than thirty days, including conducting a minimum of one public hearing.

45.07: Eligible Project Costs

- (1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.
- (2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.
- (3) Project costs incurred by an eligible borrower prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:
 - (a) Project design, including preliminary engineering and a project evaluation report, project construction or related professional services may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:
 1. The eligible borrower has submitted a written and adequately substantiated request for approval;
 2. The Department's written approval is obtained before initiation of the project and award of any loan for the project; and
 3. The project is included and maintains its status on the current calendar year Intended Use Plan Project Listing.
 - (b) The Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an

eligible borrower receiving the Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) proceeds at its own risk.

(4) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.

(5) As a loan recipient, an eligible borrower shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department or the Trust is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.

(6) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.

45.08: Project Evaluation Report

(1) Unless otherwise determined by the Department, the planning information required for projects receiving financial assistance pursuant to 310 CMR 45.00 shall be contained in a Project Evaluation Report.

(2) The Department will determine the required scope of a Project Evaluation Report based on the nature and duration of the proposed project. Unless otherwise determined by the Department, a complete Project Evaluation Report generally must include:

- (a) A description of the proposed project;
- (b) An analysis of the cost-effectiveness of the project and the alternatives considered;
- (c) For the selected alternative, a concise description which addresses, at a minimum, the following areas:
 - 1. the relevant design parameters for the project;
 - 2. the estimated capital construction and operation and maintenance costs of the project (identifying possible federal, state, local, and other shares), and a description of the manner in which costs will be financed;
 - 3. the cost impacts on users of the system; and
 - 4. the institutional, financial, legal and management arrangements necessary for successful implementation of the project.
- (d) A public participation program that includes, at a minimum:
 - 1. a public informational meeting to discuss the project alternatives and their environmental impact; and
 - 2. a subsequent public hearing on the selected proposed project, including its environmental impact.

45.09 Environmental Review and Federal Cross-Cutter Requirements

(1) Environmental Review Requirements. All projects approved by the Department to receive a loan from the Trust shall, at a minimum, comply with the requirements of MEPA and the regulations promulgated thereunder at 301 CMR 11.00. In addition, a public hearing shall be held on the project if the Department determines that the project is controversial, or if the Department otherwise determines that a hearing is in the public interest. The Department may also require the eligible borrower to consider project alternatives and to provide the public an opportunity to comment on such alternatives.

(2) Federal Cross-Cutter Requirements. All projects to be funded by funds directly made available by federal capitalization grants shall comply with all federal cross-cutters applicable to the project, as determined by the Department. The Department may require any other project to comply with one or more of the federal cross-cutters deemed applicable to the project by the Department.

45.10: Affirmative Action and M/WBE Requirements

(1) Eligible borrowers receiving financial assistance from the Trust shall comply with applicable federal and state anti-discrimination laws and requirements, including the Department's requirements in the areas of Affirmative Action in employment and Minority and Women Business Enterprise ("M/WBE") use in contracting.

(a) In the area of Affirmative Action, such eligible borrowers shall adopt, for use in all contracts for \$50,000 or more, an adapted version of the Commonwealth of Massachusetts' "Supplemental Equal Employment Opportunity Anti-discrimination and Affirmative Action Program." The contracts may include minority workforce percentages greater than those required for the geographical locations of the construction project as set forth in the Supplemental Program.

(b) In the area of M/WBE utilization, eligible borrowers shall make positive efforts to use M/WBEs for use in all construction, service and supply subagreements for the project financed by the loan.

1. Such efforts should achieve the applicable federal and/or state goals established for MBE participation and WBE participation, but, at a minimum, should allow M/WBEs the maximum feasible opportunity to compete for project subagreements.

2. An eligible borrower receiving a loan from the Trust shall promptly notify the Department in writing when it has good reason to believe that its positive efforts to use M/WBEs in the subagreements for the project will not achieve one or both of the applicable M/WBE utilization goals.

45.11 Project Approval and Regulation

(1) Application

(a) An eligible borrower whose project is on the Intended Use Plan Project Listing portion of the calendar year priority list must first apply to the Department to receive a loan from the Trust to finance costs of the project. The eligible borrower must file a complete application with the Department containing the following information and documentation:

1. General Information which must include evidence of a funding authorization or commitment by the eligible borrower sufficient to cover the project cost, and, as applicable, certification of the authority of the eligible borrower to file the application.

2. Financial Information pertinent to the Trust's evaluation of the eligible borrower's ability to repay the loan.

3. Project Information which demonstrates to the Department's satisfaction that the project is sufficiently advanced in its implementation, including, as applicable:

- a. approvable plans and specifications for the project;
- b. evidence that the eligible borrower has, at a minimum, filed applications for any permits or environmental reviews applicable to the project; and
- c. a project schedule that demonstrates to the Department's satisfaction that the project will commence no later than six months from the expected date of issuance of a project approval certificate, assuming the Department determines that the project is approvable.

4. Supplemental Information such as title to the project site or evidence of some other appropriate property interest in the project site, any necessary intermunicipal agreements, documentation related to the user charge system, etc.

5. Applicant Certification as to the completeness of the application in accordance with the Department's application form and requirements, and as to the accuracy and completeness of the information provided by the eligible borrower in its application.

(b) The Department may deny any application which it determines to be incomplete. Prior to taking final action on an application, the Department may request the eligible borrower to clarify and/or supplement information contained in its application, or to attend an informal conference(s) with the Department to discuss the application.

(2) Project Approval Certificate

(a) The Department's approval of an applicant's project shall be contained in a Project Approval Certificate issued to the Trust. The Department's issuance of a Project Approval Certificate is a necessary prior condition to the award of a loan by the Trust to finance the costs of a project.

(b) The Department shall not approve a project for a loan from the Trust unless the eligible borrower adopts a user charge system which is designed to provide adequate revenues required for operation and maintenance, including replacement, of the project, and is based on a flat or on an ascending unit rate per volume. This requirement does not apply to any project for which a user charge system is inapplicable, as determined by the Department.

(c) In addition to approving the project, the Project Approval Certificate shall certify those costs of the project determined by the Department to be eligible for assistance from a loan, and those costs determined to be eligible for a subsidy under the loan. The Project Approval Certificate shall also identify the level of subsidy applicable to the project in accordance with M.G.L. c. 29C and, as applicable, any additional subsidy applicable to the project authorized by special law. Subsidy is expressed as a grant equivalency percentage in the Project Approval Certificate.

(d) The Project Approval Certificate may also contain such other conditions and limitations as the Department deems necessary to ensure compliance by an eligible borrower with 310 CMR 45.00 and with all other federal and state statutes and regulations applicable to the construction and operation of the project. Such conditions shall include, but are not limited to, a project completion schedule which shall require the eligible borrower to initiate the project, as determined by the Department, no later than six months from the date of the Department's issuance of the Project Approval Certificate.

(e) The Department shall issue the Project Approval Certificate to the Trust for its action and concurrently forward a copy of such certificate to the eligible borrower. The Trust shall thereafter

enter into a loan commitment with an eligible borrower consistent with the terms of the Project Approval Certificate. Following entry into a binding loan commitment, the Trust shall prepare and deliver a loan agreement for execution by the eligible borrower, consistent with the terms of the Project Approval Certificate as incorporated into the Department's Project Regulatory Agreement.

(3) Project Regulatory Agreement

(a) On or prior to the date of a loan from the Trust for a project approved by the Department, the eligible borrower and the Department shall execute and deliver to the Trust a Project Regulatory Agreement relating to the Department's regulation and supervision of the project in accordance with 310 CMR 45.00. The Project Regulatory Agreement shall be in form and substance satisfactory to the Department. The Project Regulatory Agreement shall be incorporated by reference in the Trust loan agreement and failure by the local governmental unit or public water system to comply with the Project Regulatory Agreement shall constitute an event of default under the loan agreement.

(b) The Project Regulatory Agreement shall contain provisions consistent with the Project Approval Certificate. In addition to incorporating pertinent conditions in the Project Approval Certificate, the Project Regulatory Agreement may also contain such other conditions and limitations as the Department deems necessary for its regulation and supervision of the project in accordance with 310 CMR 45.00, including but not limited to:

1. the schedule for disbursement of loan proceeds;
2. the payment requisition requirements and procedures;
3. the requirements and procedures for the Department's audit of payment requisitions;
4. covenants by the eligible borrower related to the project, including a covenant to comply with all federal and state statutes and regulations applicable to the eligible borrower's construction and operation of the project;
5. the measures available to the Department to remedy a default by the eligible borrower under the Project Regulatory Agreement;
6. any requirements regarding certification of a project's performance in accordance with the Department's approval; and
7. compliance with the Department's guidance on the use of and requirements for professional subagreements.

REGULATORY AUTHORITY:

310 CMR 45.00: St. 1998, c.78, M.G.L. c. 29C, c. 21, s. 27A, and c. 111, s.160

Appendix B

Authority to File And Certifying Authority to File

Sample: Resolution Authorizing Officer to File Application with the Massachusetts Department of Environmental Protection, for State Financial Assistance for Drinking Water Protection Projects.

AUTHORITY TO FILE

Whereas, _____, after thorough investigation,
(Applicant)
has determined that the work activity consisting of:

is both in the public interest and necessary to protect the public health, and that to undertake this activity, it is necessary to apply for assistance; and

Whereas, the Department of Environmental Protection (the "Mass DEP") and the Massachusetts Water Pollution Abatement Trust (the "Trust") of the Commonwealth of Massachusetts, pursuant to Chapter 21 and Chapter 29C of the General Laws of the Commonwealth ("Chapter 21" and "Chapter 29C") are authorized to make loans to municipalities for the purpose of funding planning and construction activities relative to Water Pollution Abatement Projects; and

Whereas, the Applicant has examined the provisions of the Act, Chapter 21 and Chapter 29C, and believes it to be in the public interest to file a loan application.

NOW, THEREFORE, BE IT RESOLVED by _____
(Governing Body)

as follows:

1. That _____ is hereby authorized on behalf
(Title of Official)
of the Applicant to file applications and execute agreements for grant and/or loan assistance as well as furnishing such information, data and documents pertaining to the applicant for a grant(s) and/or loan(s) as may be required; and otherwise to act as the authorized representative of the Applicant in connection with this application;
2. That the purpose of said loan(s), if awarded, shall be to fund construction activities.
3. That if said award is made the Applicant agrees to pay those costs which constitute the required Applicant's share of the project cost.

Sample: Certification to the Massachusetts Department of Environmental Protection, as to Authority to File Applications for State Financial Assistance for Drinking Water Protection Projects.

CERTIFYING AUTHORITY TO FILE

I hereby certify that the _____ of
(Name of Governing Body)

the _____
(Corporate Name of Local Government Unit)

(hereinafter referred to as the "Applicant"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted to authorize

(Title of Local Government Unit Official)

to act on behalf of the Applicant, as its agent, in filing applications for, executing agreements regarding, and performing any and all other actions necessary to secure for the Applicant such loan(s) for construction or planning of Water Pollution Abatement Projects as may be made available to the Applicant pursuant to the provisions of the Massachusetts Clean Waters Act (M.G.L. c.21, section 27-33E, inclusive, as amended) and the Water Pollution Abatement Revolving Loan Program (M.G.L. c.29C) for the following project:

(describe project)

I hereby certify that _____ is the present incumbent
(Name of Person)

of the position referenced above, and do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the governing body held on the ____ day of ____, 20__, and duly recorded in my office:
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution, including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate:

3. That if an impression of a seal has been affixed below, it constitutes the official seal of the Applicant and this certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal:

IN WITNESS WHEREOF, I have hereunto set my hand this

_____ day of _____, 20____

Appendix C

Sample Language for Local Appropriations

MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST

NOTE: The following are suggested forms of a town meeting article and vote and city council loan order. These forms are provided as guidance only. Bond counsel to the municipality should be consulted to determine the exact form of authorization required and to determine which local body or official must approve the terms of the borrowing and the forms of documentation. Note also that districts and regional local governmental units may have substantially different authorization requirements from those indicated below for towns and cities.

SUGGESTED FORM OF TOWN MEETING ARTICLE AND VOTE

Article

To see if the Town will vote to appropriate a sum of money for the [construction] [planning] of (insert description of the water pollution abatement project); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Vote

Voted: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the water pollution abatement project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Board of Selectmen, Board of Public Works or other appropriate local body or official) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

SUGGESTED FORM OF CITY COUNCIL LOAN ORDER

Ordered: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the water pollution abatement project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Mayor or Manager) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

Appendix D

Certificate As To Title To Project Site

CERTIFICATE AS TO TITLE TO PROJECT SITE

I, _____, Attorney At Law, representing the (City/town)
of _____, Massachusetts, herein called the Applicant, as title counsel,
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (treatment plant, interceptors, outfalls, pumping stations, force mains, and appurtenances) of the water pollution abatement project for which State Financial Assistance has been offered, identified as DWSRF- _____
2. That I have examined the deed records of the county or counties in which this project is to be located and, in my opinion, the Applicant has a legal and valid fee simple title or other estate or interest in the site of the project, including the necessary easements and rights-of-way as are necessary to undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.
3. That any deeds or documents required to be recorded, in order to protect the title of the owner and the interest of the Applicant, have been duly recorded or filed for record wherever necessary with reference to Contracts _____ through _____, inclusive.

Dated this _____ day of _____, 20____.

Appendix E

Policy for Review of Sewer Line/Water Supply Protection

DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY FOR REVIEW OF SEWER LINE / WATER SUPPLY PROTECTION

The Department of Environmental Protection (DEP) seeks to protect existing and potential water supplies from the potentially negative effects of leaking sewer lines through the adoption of a DEP policy on this subject.

The following restrictions will apply to new sewer construction statewide:

Gravel Packed Wells

Within the 400 foot radius protective distance around gravel packed wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Tubular Wells

Within the 250 foot radius protective distance around tubular wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Gravel Packed and Tubular Wells

Within a minimum radius of 2,640 feet or unless otherwise documented by an appropriate study specifically defining the area of influence and approved by DEP, all sewer lines and appurtenances will be designed and constructed for maximum watertightness.

Force Mains or Pressure Sewers: shall be tested at 150% above maximum operating pressure or 150 p.s.i. whichever is greater. Testing shall conform to the requirements of the American Water Works Association (AWWA) standard C 600.

Gravity Sewers: shall be tested by approved methods which will achieve test results for infiltration or exfiltration of less than 100 gallons/inch diameter/mile/24 hours.

Manholes: shall be installed with watertight covers with locking on bolted and gasketed assemblies. Testing for infiltration/exfiltration shall conform to the same standard as the maximum allowed for pipes in the manhole as required for gravity sewers, indicated above.

Satisfactory test results for Force Mains, Manholes and Gravity Sewers shall be performed prior to the expiration of the contractor's one year guarantee period.

All pumping stations within this zone shall have standby power high alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner and approved by DEP.

A minimum of Class B bedding as defined by Water Environment Federation Manual of Practice No. 9 must be used for all piping.

Service connections (laterals and house connections) shall be rigidly inspected by the appropriate municipal official. Certified inspection reports shall be submitted DEP.

Bedrock Wells

The above requirements are the same for bedrock wells, with DEP reserving the right to require more stringent controls on a case-by-case basis.

Surface Water Supplies

Within 100 feet of all surface water supplies and tributaries all sewer lines and appurtenances are prohibited except as required to cross tributaries or to eliminate existing or potential pollution to the water supply. In the latter case watertight construction methods shall be used.

Tributary stream crossings shall employ watertight construction methods of sewer lines and manholes. Watertight construction must extend 100 feet to either side of the stream.

Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to DEP for approval.

Beyond 1,000 feet and within the watershed of surface water supplies the Department may in specific circumstances, after review, require additional controls.

Potential Public Water Supplies

The above requirements also apply to potential public water supplies.

Baseline Data Requirements

Two (2) copies of an appropriately scaled map(s) shall be submitted to DEP which details the proposed sewers and/or appurtenances and also includes the following:

1. The locations of all nearby existing or potential surface water supplies, tributaries thereto, and watershed boundaries;
2. the location of existing and potential public and municipal potable groundwater supply wells.

DEP reserves the right to impose more restrictive measures than those contained in this policy as deemed appropriate.

Definitions

- Appurtenances - all attachments to sewer lines necessary for the transport and operation and maintenance of sewer lines, including manholes, pumping station, siphons, etc.
- Area of influence - that area of an aquifer which contributes water to a well under the most severe recharge and pumping condition that can be realistically anticipated (i.e. pumping at the safe yield of the well for 180 days without any natural recharge occurring). It is bounded by the groundwater divides which result from pumping the well and by the contact of the edge of the aquifer with less permeable materials such as till and bedrock. At some locations, streams and lakes may form recharge boundaries.
- Potential public water supply - areas designated by communities for water supply purposes where land has been set aside and DEP approved pump tests conducted and surface water supplies as defined below.
- Surface Water Supply - Waters classified as Class A in the Massachusetts Surface Water Quality Standards.
- Public Water Supply Systems - as defined in 310 CMR 22.02 (DEP Drinking Water Regulations).
- Class B Bedding - as defined in Water Environment Federation Manual of Practice No. 9.

Appendix F

Model Sub-Agreement Provisions

Professional Services Agreements -Required Provisions

All contracts between CWSRF borrowers and professional services consultants shall contain the following provisions.

- (1) The owner and the contractor agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.
- (2) The work under this agreement is funded in part by the water pollution abatement fund. Neither the Commonwealth of Massachusetts nor the Department of Environmental Protection or the Water Pollution Abatement Trust is a party to this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.
- (4) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
- (5) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable Mass DEP requirements in effect on the date of execution of this agreement.
- (6) The owner's or Mass DEP's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor Mass DEP's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.
- (7) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or Mass DEP caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent solely attributable to the owner, owner-furnished data or any third party not controlled by the contractor. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control. Where innovative processes or techniques are recommended by the engineer and are used, the engineer shall be liable only for gross negligence to the extent of such use.
- (8) The services to be performed by the contractor shall include all services required to complete the scope of work as defined and set out in the professional services agreement to which these provisions are attached in accordance with applicable regulations.
- (9) The owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change, unless the owner grants a further period of time before the date of final payment under this agreement.
- (10) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the owner.

(11) In the event that there is a modification of Mass DEP requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

(12) Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(13) The owner may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new phase) and the contractor is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.

(14) If the owner terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on services not performed or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the contractor's default. If the contractor terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred before the termination, in addition to termination settlement costs the contractor reasonably incurs relating to commitments which had become firm before the termination.

(15) Upon receipt of a termination action under paragraphs (13) or (14), the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the contractor may have accumulated in performing this agreement, whether completed or in process.

(16) Upon termination under paragraph (13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the contractor from all claims and damages arising out of improper use of the contractor's work.

(17) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as paragraph (14) provides.

(18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the contractor arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

(19) The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, the Mass DEP and State Auditor's Office or any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.

(20) The contractor agrees to include paragraphs (19)-(23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$25,000.

(21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(22) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (19) or (20), to any of the agencies referred to in paragraph (19), provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the contractor.

(23) The contractor shall maintain and make available records under paragraph (19) and (20) during performance on eligible work under this agreement and until 6 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than six years from the date of final payment.

(24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or Mass DEP determine that any price, including fee, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(25) Any subcontractors and outside associates or consultants required by the contractor in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.

(26) The contractor agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap status or national origin.

(27) The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(28) If it is found, after notice and hearing, by the owner that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement. The owner may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.

(29) In the event this agreement is terminated as provided in paragraph (28), the owner shall be entitled: (1) To pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

(30) The Mass DEP has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with Trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and the Mass DEP reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.

(31) All such subject data furnished by the contractor pursuant to this agreement are instruments of his services in respect of the project. It is understood that the contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the contractor's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the contractor. Any such verification or adaptation will entitle the contractor to further compensation at rates agreed upon by the owner and the contractor.

Appendix G

Cost and Price Summary (SRF 90-1)

COST OR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER THE STATE REVOLVING FUND PROGRAM				SRF-90-1	
PART I - GENERAL					
1. APPLICANT			2. PROJECT		
3. NAME OF CONTRACTOR OR SUBCONTRACTOR		4. FEIN	5. DATE OF PROPOSAL		
6. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR			7. TYPE OF SERVICE TO BE FURNISHED		
PART II - COST SUMMARY					
8. DIRECT LABOR (Specify labor categories)		ESTI- MATED HOURS	HOURLY RATE	ESTIMATED COST	TOTAL
				\$	
DIRECT LABOR TOTAL:					\$
9. INDIRECT COSTS (Specify indirect cost pools)		RATE	x BASE =	ESTIMATED COST	
			\$	\$	
INDIRECT COSTS TOTAL:					\$
10. OTHER DIRECT COSTS					
a. TRAVEL				ESTIMATED COST	
(1) TRANSPORTATION				\$	
(2) PER DIEM				\$	
TRAVEL SUBTOTAL:				\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)		QTY	COST	ESTIMATED COST	
			\$	\$	
EQUIPMENT SUBTOTAL:				\$	
c. SUBCONTRACTS				ESTIMATED COST	
				\$	
SUBCONTRACTS SUBTOTAL:				\$	
d. OTHER (Specify categories)				ESTIMATED COST	
				\$	
OTHER SUBTOTAL:				\$	
OTHER DIRECT COSTS TOTAL:					\$
11. TOTAL ESTIMATED COST					\$
12. PROFIT					\$
13. TOTAL PRICE					\$

PART III - CERTIFICATIONS

14. CONTRACTOR

14a. HAS A FEDERAL AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL GRANT OR CONTRACT WITHIN THE PAST TWELVE MONTHS?

YES NO (If "YES" give name, address, and telephone number of reviewing office.)

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

14c. This proposal is submitted for use in connection with and in response to (1)_____. This is to certify that to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of (2)_____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above costs and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.

(3) _____
DATE OF EXECUTION

SIGNATURE OF PROPOSER

TITLE OF PROPOSER

15. APPLICANT

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

DATE OF EXECUTION

SIGNATURE OF APPLICANT

TITLE

16. DEP REVIEWER (if applicable)

DATE OF EXECUTION

SIGNATURE OF REVIEWER

TITLE

Appendix H

MBE/WBE Forms - Professional Services Contracts

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION FOR PROFESSIONAL SERVICES CONTRACTS

I. Purpose

The purpose of this guidance document is to assist local governmental units ("LGUs") and their Prime Consultant in demonstrating compliance with the Bureau of Resource Protection (the "Bureau"), Department of Environmental Protection's (the "Mass DEP"), requirements for minority and women's business enterprise ("M/WBE") participation in professional services contracts.

II. Requirements

The Bureau applies 310 CMR 44.10 ("Affirmative Action Requirements") to professional services contracts, which requires positive efforts to achieve a goal of 4.65% MBE and 16.03% WBE participation.

III. Procedures

1. In cases where the professional services contracts achieve the goal of 4.65% MBE and 16.03% WBE participation, the LGU and/or its Prime Consultant is required to submit Form EEO-DEP-190E ("Schedule of Participation for Professional Services"), Form EEO-DEP-191E ("Letter of Intent"), and Form EEO-DEP-VIF-E ("Vendor Information Form") to the Mass DEP. Form EEO-DEP-190E identifies the proposed M/WBE subcontractors, the type of services to be provided by each subcontractor (e.g., Architecture, preparation of O&M manuals, laboratory analysis, etc.), and the respective dollar value of their participation. Form EEO-DEP-191E must be completed for each M/WBE subcontractor identified on Form EEO-DEP-190E. Form EEO-DEP-VIF-E will be used to analyze the actual availability of M/WBEs to do work in the relevant contract categories, and to evaluate the need for any additional modification of the Federal "Fair Share" M/WBE utilization goals applicable to SRF projects in subsequent years.
2. In the event that a professional services contract does not achieve the goal of 4.65% MBE and 16.03% WBE participation, the Bureau may request that the LGU's Prime Consultant provide additional documentation demonstrating what positive efforts were made to achieve the participation goal. In cases where the LGU's Prime Consultant fails to demonstrate the 4.65% MBE and 16.03% WBE participation in the professional services contract, the Prime Consultant must submit Form EEO-DEP-490E ("Request for Waiver"), together with the supporting documentation identified therein, to the Mass DEP.
3. The Bureau's project approval certificate shall contain a condition requiring the LGU's Prime Consultant to submit all executed consultant contracts, including contracts with M/WBE subcontractor(s) if in excess of \$25,000, to the Mass DEP within sixty (60) days from the date of the award of financial assistance to the LGU by the Water Pollution Abatement Trust (the "Trust"). Such contracts must be included as an attachment to Form EEO-DEP-290E ("Certificate of Work Start-up" by M/WBE) submitted to the Bureau.

4. In order for the Mass DEP to monitor compliance with its above stated M/WBE provisions for professional services contracts, any LGU who does not file monthly or bi-monthly Payment Requisitions on Form -3000 (Consultant Engineer's Request and Certification) to document W/MBE activity, will be required at a minimum to submit Form EEO-DEP-390E ("Quarterly M/WBE Activity Report") on a quarterly basis. The Form EEO-DEP-390E is not attached to this package but will be made available to those that need to use it when the Form 3000 reporting is not an option. Finally, Form EEO-DEP-590E (M/WBE "Contract Completion Verification") must accompany a request by an LGU for final payment from the Bureau.

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

SCHEDULE OF PARTICIPATION FOR PROFESSIONAL SERVICES

Project Title: _____ **Project Location:** _____

Minority Business Enterprise Participation in the SRF Loan Work

Name & Address of MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
Total MBE Commitment:		\$
Percentage MBE Participation = (Total MBE Commitment) / (Total Engineering Cost) =		%

Women Business Enterprise Participation in the SRF Loan Work

Name & Address of WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
Total WBE Commitment:		\$
Percentage WBE Participation = (Total WBE Commitment) / (Total Engineering Cost) =		%

The Prime Consultant agrees to furnish implementation reports as required by the Awarding Authority to indicate the M/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

Name of Prime Consultant: _____

Date: _____ **By:** _____
Signature

NOTE: Participation of a Minority-owned or Women-owned enterprise may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of Minority participation and again of Women participation.

LETTER OF INTENT FOR PROFESSIONAL SERVICES

Project Title: _____ Project Location: _____

EEO-DEP-191E

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

CERTIFICATE OF WORK START-UP FOR PROFESSIONAL SERVICES

This form is to be submitted by Prime Consultant to the Mass DEP CRU Director via Mass DEP Program Manager within 10 days after commencing work by the MBE or WBE. A separate form must be filed for each MBE/WBE involved in the project. Be sure to indicate whether this form is being filed in accordance with the original or a revised schedule of participation.

Contract #: _____ Date: _____ SRF #: _____

Contract Title: _____ Project Location: _____

Prime Consultant: _____

Subcontractor: _____
(Please indicate ☐ MBE or ☐ WBE)

DESCRIPTION OF MBE/WBE WORK (LETTER OF INTENT)

Description of Activity and Total Participation*

MBE/WBE Work to Commence on: _____ MBE/WBE Amount: \$ _____

☐ ORIGINAL Schedule OR ☐ REVISED Schedule, DATED: _____

If the work start up date or description of activity are different from that listed on the Letter of Intent or Contract, please explain: (if more space is needed continue on back of sheet)

I hereby certify that all work listed in the Contract/Letter of Intent (or approved changes thereto as explained above) will/have commence(d) on _____ And that the above amount of these services is the true amount.

PRIME CONSULTANT	SUBCONTRACTOR
(Authorized Original Signature) _____ Date _____	(Authorized Original Signature) _____ Date _____
ADDRESS: _____	ADDRESS: _____
TELEPHONE #: _____	TELEPHONE #: _____
FEIN: _____	FEIN: _____

*** Attach a copy of the Letters of Intent and the Signed Contract.**

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

REQUEST FOR WAIVER FOR PROFESSIONAL SERVICES

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for MBE/WBE participation, the Prime Consultant seeks relief from these requirements by filing this form. Failure to comply with this process shall be cause to reject the eligibility of engineering costs.

General Information

Project Title: _____ Project Location: _____

Prime Consultant: _____

Mailing Address: _____

Contact Person: _____ Telephone No. () _____ Ext. _____

Minimum Requirements

The Prime Consultant must show that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for approval of the application by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with minority and/or woman owned businesses, including:
 - 1. names, addresses, telephone numbers and contact dates of all such companies contacted;
 - 2. copies of dated written notice(s) which were sent to MBE/WBE potential subcontractors prior to application deadlines;
 - 3. copies of dated advertisements as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;
 - 4. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
 - 5. in the case(s) where a negotiated price could not be reached the Prime Consultant should detail what efforts were made to reach an agreement on a competitive price.
- B. The Agency may require the Prime Consultant to produce such additional information as it deems appropriate and may obtain whatever other information it deems necessary to reach a conclusion from any source.

- C. No later than fifteen (15) days after receipt of all necessary information and documentation, a decision will be made in writing to the Prime Consultant. If the waiver request is denied, the facts upon which a denial is based will be set forth. A Prime Consultant who is dissatisfied with the decision may then appeal that decision to the EOEA.

Special Note

If it is determined that one or more of the MBE/WBE subcontractors as submitted by the Prime Consultant on form EEO-DEP-190 is not SOMWBA certified or certified by the Local Government Unit in accordance with the provisions of Executive Order 237, the Prime Consultant shall have 10 working days, following notification, to either find a certified MBE/WBE subcontractor to perform work equal to or greater than that of the uncertified or submit a waiver request.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the Prime Consultant in this matter.

(authorized original signature)

DATE

MAILING INSTRUCTIONS: (CERTIFIED MAIL)

TO: Mass DEP-DMS PROGRAM
MANAGER
ONE WINTER STREET – 5TH FLOOR
BOSTON, MA 02108-3237

CC: Mass DEP - CRU DIRECTOR
ONE WINTER STREET - 4TH FLOOR
BOSTON, MA 02108-3237

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

CONTRACT COMPLETION VERIFICATION FOR PROFESSIONAL SERVICES

Within 30 days of submission by the Prime Consultant of the FINAL PAY ESTIMATE, verification of all MBE/WBE participation in the contract must be submitted by the Owner to the Department of Environmental Protection.

This form must be completed (original signatures only) and forwarded to the Mass DEP CRU Director, 4th Floor, One Winter Street, Boston, MA 02108 with one (1) copy to the Mass DEP Program Manager.

OWNER

_____ Name of Owner	_____ Contract Name/Number
_____ Authorized Representative (Type Name & Title)	_____ Authorized Representative (Signature)
	_____ Date

PRIME CONSULTANT

_____ Company Name	_____ FEIN	_____ Telephone No.	_____ Contract Name/Number
_____ Street		/ / Contract Acceptance Date	
_____ City/Town	_____ Zip	\$ Contract Amount	
_____ (Type Name and Title)		_____ Signature	_____ Date

[MBE] [WBE] SUBCONTRACTOR (Circle One)

_____ Company Name	_____ FEIN	\$ Subcontract Amount	/ / 1 st Payment Date
_____ Street		\$ Total Received	/ / Last Payment Date
_____ City/Town	_____ Zip	_____ Telephone No.	
_____ (Type Name and Title)		_____ Signature	_____ Date

Commonwealth of Massachusetts
Vendor Information Form – Professional Services

Awarding Authority:			
Contract Name:		Contract Project Number:	
<u>Company Name</u>			
Street Address 1			
Street Address 2			
City:		State:	Zip Code:
Telephone Number: () -		Fax Number: () -	E-mail Address:
WWW Address:		Dunn & Brad Street Number:	Federal Employer ID No.
County:		Contact Person:	
<u>What geographic area does your firm service?</u>			
<input type="checkbox"/> Metropolitan Boston <input type="checkbox"/> Massachusetts (Entire State) <input type="checkbox"/> Vermont <input type="checkbox"/> Southeastern Mass <input type="checkbox"/> Rhode Island <input type="checkbox"/> New Jersey <input type="checkbox"/> Western Mass <input type="checkbox"/> New Hampshire <input type="checkbox"/> New York <input type="checkbox"/> North of Boston <input type="checkbox"/> Connecticut <input type="checkbox"/> Connecticut			
Primary SIC Code		Secondary SIC Code	
Date company was founded			
<u>Gross Annual Sales</u>			
<input type="checkbox"/> \$0 - \$49,999 <input type="checkbox"/> \$500,000 - \$999,999 <input type="checkbox"/> \$5,000,000 - \$10,000,000 <input type="checkbox"/> \$50,000 - \$99,999 <input type="checkbox"/> \$1,000,000 - \$2,499,999 <input type="checkbox"/> Over \$10,000,000 <input type="checkbox"/> \$100,000 - \$ \$499,999 <input type="checkbox"/> \$2,500,000 - \$4,999,999			
<u>Number of Employees</u>			
<input type="checkbox"/> 1- 10 employees <input type="checkbox"/> 20 – 30 employees <input type="checkbox"/> OVER 50 employees <input type="checkbox"/> 10 – 20 employees <input type="checkbox"/> 30 – 50 employees			
<u>Bonding Capacity</u>			
<input type="checkbox"/> \$0 - \$49,999 <input type="checkbox"/> \$500,000 - \$999,999 <input type="checkbox"/> \$5,000,000 - \$10,000,000 <input type="checkbox"/> \$50,000 - \$99,999 <input type="checkbox"/> \$1,000,000 - \$2,499,999 <input type="checkbox"/> Over \$10,000,000 <input type="checkbox"/> \$100,000 - \$ \$499,999 <input type="checkbox"/> \$2,500,000 - \$4,999,999			
<u>Business Structure</u>			
<input type="checkbox"/> Profit <input type="checkbox"/> Non-Profit		<input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> C Corporation <input type="checkbox"/> Joint Ventures <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> LLC	
Are you a minority-owned firm?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you a women-owned firm?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you certified by the State Office of Minority and Women Business Assistance (SOMWBA)?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If you are SOMWBA certified are you certified as an? <input type="checkbox"/> MBE		<input type="checkbox"/> WBE	<input type="checkbox"/> DBE
Are you certified by Division of Capital Assets Management and Maintenance formerly know as DCPO?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you pre-qualified with the Massachusetts Highway Department?		<input type="checkbox"/> Yes	<input type="checkbox"/> No

Commonwealth of Massachusetts Vendor Information Form - Professional Services (Page 2)		
Largest State Contract:		
<input type="checkbox"/> \$0 - \$49,999	<input type="checkbox"/> \$500,000 - \$999,999	<input type="checkbox"/> \$5,000,000 - \$10,000,000
<input type="checkbox"/> \$50,000 - \$99,999	<input type="checkbox"/> \$1,000,000 - \$2,499,999	<input type="checkbox"/> Over \$10,000,000
<input type="checkbox"/> \$100,000 - \$ \$499,999	<input type="checkbox"/> \$2,500,000 - \$4,999,999	
Contracting Agency for Largest State Contract:		
Company Comments: (Include a brief description of the goods and/or services your company provides.		
Name of President or CEO		Date:
Telephone Number:		
Name of Individual Completing the Form		Date:
Telephone Number:		

Appendix I

Statement of Tax Compliance

STATEMENT OF TAX COMPLIANCE

I, _____, as _____ of
(Title)

_____, whose principal place of business is located at
(Business)

_____, do hereby certify that the above-named
_____ has complied with all laws of the

Commonwealth of Massachusetts relating to taxes, in accordance with the provisions of
Massachusetts General Laws, Chapter 62C, 49A, as amended.

Signed under the penalties of perjury this _____ day of _____, 20____.

DATED: _____

(Authorized Signature)

Appendix J

Policy on Eligible Project Costs

**Commonwealth of Massachusetts - Department of Environmental Protection
Drinking Water State Revolving Fund Program**

Policy on Eligible Project Costs

Purpose

This document establishes the Department's guidelines for determining the eligible project costs of drinking water projects financed through the Drinking Water State Revolving Fund Program (DWSRF).

Applicability

This Guidance is intended for use by SRF loan applicants and their consultants in the preparation of applications for DWSRF funding, and by DEP SRF Program staff in reviewing loan applications.

Users of this guidance are strongly encouraged to review the regulatory provisions contained in 310 CMR 45.04 which address the types of projects eligible for financing through the DWSRF. These provisions are attached to this guidance as Appendix 1. The regulatory provisions pertaining to eligible project costs are contained in 310 CMR 45.07, a copy of which is attached as Appendix 2.

Applicants should also refer to the relevant Intended Use Plan (IUP) on which their project appears, since the annual IUP may limit which stages of project implementation (i.e., planning, design, or construction) are eligible for that fiscal year. For projects on the Calendar 2005 IUP, planning and/or design stage costs and design projects are not eligible for assistance.

I. Introduction

This policy summarizes how the Department distinguishes *eligible costs* (those necessary for the completion of a drinking water project) from *ineligible costs* (those which are not necessary for the completion of the project.) The guidance is provided primarily in the form of examples and includes separate listings for eligible and ineligible costs. Eligible borrowers should contact the Department for further guidance concerning any other categories of costs not clearly appearing on either list. In general, in addition to being **necessary**, eligible costs must be (a) **reasonable**, (b) **allocable** to the project, (c) **not a general expense** of carrying out the overall responsibilities of the eligible borrower or LGU, and (d) **not funded** under another state or federal financial assistance program.

The Department determines eligible costs of each project on a case-by-case after reviewing the eligible borrower's loan application. This determination is incorporated within the Project Approval Certificate. Issuance of the Project Approval Certificate is contingent upon an applicant satisfying the criteria and procedures set forth in the DWSRF program regulations, 310 CMR 45.00.

II. Eligible Costs

The eligible costs in this guideline are divided into project phases and categories and include the Planning phase, the Design phase, the Construction phase, a Miscellaneous and an Administrative category.

A. Planning Phase Eligible Costs [NOT AVAILABLE FOR CY 2005 IUP PROJECTS]

The costs of preparing a Project Evaluation Reports (PER) (310 CMR 45.08) directly related to the drinking water project are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs incurred in complying with the requirements of the National Environmental Policy Act (NEPA) and the Massachusetts Environmental Policy Act (MEPA).
3. Pilot studies.

B. Design Phase Eligible Costs [NOT AVAILABLE FOR CY 2005 IUP PROJECTS]

The costs for preparation of construction drawings, specifications, pre-design reports, estimates, and construction contract documents related to the drinking water projects are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs of survey and borings.

C. Construction Phase Eligible Costs

The costs of construction and related activities necessary to build the drinking water project are eligible costs and include but are not be limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The construction contract including a 5 % construction contingency
3. Costs of start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
4. The cost of an operation and maintenance (O & M) manual or revisions to an existing O & M manual for drinking water treatment facilities .
5. The cost for post construction certification.
6. Cost of acquiring all or part of an existing publicly or privately owned drinking water project provided all the following criteria are met:
 - a. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new drinking water benefits;
 - b. The acquired drinking water project was not built with previous federal or state financial assistance;
 - c. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

d. The acquisition does not circumvent the requirements of 310 CMR 45.00, or other state or local requirements.

7. Cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory equipment necessary to conduct tests required for plant operation.

8. Cost of permanently fixed shop equipment (i.e., lathes, drill press other power shop equipment) installed at the drinking water plant necessary for the operation of the works.

9. Costs of necessary safety equipment to be used exclusively at the drinking water facility, provided the equipment meets applicable federal, state, local or industry safety requirements.

10. Costs of a reasonable inventory of necessary maintenance equipment (such as lawn mowers, snow blowers, and power and shop tools) and customary furniture and office equipment for new treatment works, provided these purchases are to be used exclusively for that treatment facility. These purchases should receive prior Department approval, be appropriate for the facility's size and useage and should be limited in cost.

11. Computers and ancillary software necessary for efficient operation of the drinking water facility.

11. Costs of royalties for the use of or rights in a patented drinking water process or product.

12. Costs allocable to the drinking water treatment purpose of multiple purpose projects.

13. Costs necessary to mitigate direct, adverse, physical impacts resulting from building drinking water facilities.

14. Change orders and the costs of meritorious contractor claims for increased costs under subagreements provided the costs are within the scope of the project, not caused by the owner's mismanagement; and not caused by the owner's vicarious liability for the improper actions of others. Eligible costs include:

a. Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents had been free of defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

b. Costs of equitable adjustments for differing site conditions.

Settlements, arbitration awards, and court judgments which resolve contractor claims shall be eligible only to the extent that they meet the requirements of 310 CMR 45.00, are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the owner, the contractor, or others.

15. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement provided the claim arises from work within the scope of the project, a formal amendment to the loan agreement is executed specifically covering the costs before they are incurred, and the costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the awardee.

16. The cost associated with the preparation of the drinking water facility site before, during and, to the extent agreed on in the loan agreement, after building, including the cost of demolition of existing structures on the drinking water facility site (including rights-of-way) if building cannot be undertaken without such demolition.

17. The cost of removal, relocation or replacement of utilities, if the recipient is legally obligated to pay such costs under state or federal law.

18. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to those costs of replacement of temporary and permanent paving over water main trenches.

D. Miscellaneous and Administrative Eligible Costs

Other costs necessary to plan or implement a drinking water project include, but are not limited to:

1. The costs of police traffic details during construction.
2. Preliminary and or final Plan of Operation.
3. Costs of force account work provided the owner demonstrates to the satisfaction of the Department that the work can be accomplished more economically by the use of the force account method, or that emergency circumstances dictate its use, and that it possesses the necessary competence required to accomplish, document, and audit such work.

III. Ineligible Costs

Ineligible Project Costs are those costs the Department determines are the eligible borrower's responsibility and or are not necessary for the completion of the project.

The Department has determined that ineligible costs include, but are not limited to, the following:

1. Costs which are incurred in excess of the approved project costs shall not be eligible for a subsidy under the loan unless the Department has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount.
2. The operational costs of drinking water projects shall be ineligible for SRF assistance.
3. Costs which are incurred in violation of applicable federal and state statutes, regulations, or requirements;
4. Bonus payments, not legally required, for completion of building before a contractual completion date.
5. Costs of basin or area wide planning which is not directly related to the project.
6. Removal, relocation or replacement of utilities located on land by privilege, such as franchise or privilege of sufferance.
7. The cost of vehicles for the transportation of the recipient's employees.
8. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, to major system components.
9. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
10. Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.
11. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.
12. Costs outside the scope of the approved project, as defined in the Project Evaluation Form.
13. Costs for capacity beyond the design life of the project.
14. Costs for which payment has been or will be received from another federal or state agency.
15. The cost of drinking water projects that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetland or floodplain.
16. The pro-rata portion of the costs for utilities which cannot be dedicated for the sole purpose of the drinking water project.

17. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.
18. Preparation of applications, plans of study, and permits required by federal, state or local regulations or procedures.
19. Architectural or engineering services or other services necessary to correct defects in a comprehensive wastewater management plan, design drawings and specifications, or other subagreement documents *except meritorious contractor claims as allowed in section II, Construction Eligible Cost, #19.*
20. The costs of acquisition (including associated legal, administrative and engineering etc.) of water main rights-of-way or drinking water treatment plant sites.
21. Costs of non-technical services (legal or administrative) for development of a user charge system, or inter-municipal agreement;
22. Architectural or engineering services or other services necessary to correct defects in a Project Evaluation report, design drawings and specifications, or other subagreement documents
23. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement
24. Buy-in cost to another community's water supply system.
25. Corrective Action Reports and related corrective action construction for conventional technology.

APPENDICES

1. 310 CMR 45.04 – Eligible Projects (and Non-Eligible Activities)
2. 310 CMR 45.07 – Eligible Project Costs

Appendix J-1

310 CMR 45.04: Eligible Projects/Ineligible Activities

- (1) Any drinking water project of an eligible borrower as defined in 310 CMR 45.03, is eligible to receive financial assistance from the Trust pursuant to St. 1998, c. 78 and 310 CMR 45.00. More specifically, eligible projects fall into the following categories:
- (a) Projects to address or prevent violations to public health standards as defined in 310 CMR 22.00 and the Safe Drinking Water Act (SDWA), including projects to come into or maintain compliance with MCLs and other requirements for contaminants with acute health effects (e.g. the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standards) and for contaminants with chronic health effects (e.g. the Lead and Copper Rule and the Disinfection Byproducts Rule), including the costs of system activities determined by the Department to constitute an effective alternative to providing treatment to come into or maintain compliance with 310 CMR 22.00 and the SDWA;
 - (b) Projects to replace aging infrastructure, if such projects are needed to maintain compliance or further the public health goals and requirements in 310 CMR 22.00 and the SDWA, including projects to rehabilitate or develop sources to replace contaminated sources, install or upgrade treatment or storage facilities, and install or replace transmission and distribution pipes to prevent contamination or improve water pressure to safe levels;
 - (c) Projects to consolidate and/or restructure a public water system (e.g. to address a system with contaminated water supply or when a system is in noncompliance or lacks adequate technical, managerial and financial capability to maintain compliance);
 - (d) Land acquisition, but only if the Department determines that such land is integral to a project and necessary to meet or maintain compliance and further the protection of public health (e.g., land needed to locate eligible treatment or distribution projects);
 - (e) The planning and/or design for any eligible project, and
 - (f) Any eligible project which uses a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 45.00. The operation and maintenance costs of such projects shall be ineligible for DWSRF assistance.

(2) ACTIVITIES AND PROJECTS THAT ARE INELIGIBLE FOR FINANCIAL ASSISTANCE

Unless otherwise determined by the Department consistent with the definition of “drinking water project” in 310 CMR 45.03, the following projects and activities are not eligible to receive financial assistance pursuant to 310 CMR 45.00:

- (a) The construction, rehabilitation or maintenance of dams;
- (b) The purchase of water rights, unless the water rights are owned by a public water system that is being purchased by an eligible borrower through consolidation as part of the eligible borrower’s capacity development strategy;
- (c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the drinking water treatment facility property;
- (d) Laboratory fees for monitoring;
- (e) Operation and maintenance costs;
- (f) Projects primarily for fire protection;
- (g) Projects for systems which the Department determines lack adequate technical, managerial and financial capability, unless the Department determines that financial assistance from the DWSRF will ensure compliance over the long term;
- (h) Projects for systems in significant noncompliance, as determined by the Department, unless the Department determines that the project will enable the system to return to compliance and that the system will maintain an adequate level of technical, managerial and financial capability to maintain compliance; and
- (i) Projects primarily intended solely future growth.

Appendix J-2

310 CMR 45.07: Eligible Project Costs

- (1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.
- (2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.
- (3) Project costs incurred by an eligible borrower prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:
 - (a) Project design, including preliminary engineering and a project evaluation report, project construction, or related professional services may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:
 1. The eligible borrower has submitted a written and adequately substantiated request for approval;
 2. The Department's written approval is obtained before initiation of the project and award of any loan for the project; and
 3. The project is included and maintains its status on the current calendar year Intended Use Plan Project Listing.
 - (b) The Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an eligible borrower receiving the Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) proceeds at its own risk.
- (4) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.
- (5) As a loan recipient, an eligible borrower shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department nor the Trust is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.
- (6) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.

Appendix K

Loan Reimbursements

Once a loan has been made with the Trust the community may begin seeking reimbursement for costs incurred on the project. The consultant engineer for the project will fill out the forms, gather the appropriate backup and submit the forms to DEP. The DEP then forwards a 1000 form to the Trust. The Trust will then wire transfer the funds to the community.

The required forms needed to seek reimbursement are: 1000, 2000 and 3000 forms. The 1000 form states the following: the approved amount of the loan, the previous requests made by the community and the current requested amount. This form must be signed by the Authorized Representative of the community.

The 2000 form is known as the contractor's form. This form shows the approved amount of the contractor's contract and M/WBE information. Similar to the 1000 form, the 2000 form maintains a running balance of the contract. The M/WBE information must be updated with each reimbursement request. The 2000 form requires the signature of the contractor, the consulting engineer and the DEP inspector.

The 3000 form is known as the consultant engineer's form. The 3000 form is exactly like the 2000 form and its requirements. The 3000 form requires the signature of the consulting engineer.

When the community signs a final loan agreement with the Trust either the community or the consulting engineer should contact the DEP to receive a copy of these forms. Those projects in the Northeast and Western regions should contact **Robert Bourque at (617) 556-1103**, and for those projects in the Southeast and Central regions contact **Margaret Mansfield at (617) 292-5943**.

Samples of these forms follow this page.

BUREAU OF RESOURCE PROTECTION

PAYMENT REQUISITION

LOAN NO.: _____ DMS PROJECT NO.: _____		REQUEST NO.: _____ 1 _____	
LEGAL NAME AND ADDRESS OF BORROWER:		PAYABLE TO:	
		PAYMENT METHOD: WIRE TRANSFER	
		ACCOUNT #:	
EXPENDITURE TYPE	APPROVED AMOUNT \$	PREVIOUS REQUESTS \$	THIS REQUEST \$
Technical Expense	\$ -	\$ -	\$ -
Construction	\$ -	\$ -	\$ -
Contingency	\$ -		
Administrative (Police)	\$ -	\$ -	\$ -
Totals	\$ -	\$ -	\$ -

SAMPLE

CERTIFICATION OF THE BORROWER:

The Authorized Representative of the Borrower identified below certifies the following:

- (i) This payment is for Project Costs and the obligations specified herein have not been the basis for a prior requisition that has been paid;
- (ii) there has been no Default, as defined in the Regulatory Agreement hereunder or no Event of Default as defined in the Loan Agreement, and no event or condition exists which after notice or lapse of time or both, would become a Default under the Regulatory Agreement or an Event of Default under the Loan Agreement exists; and
- (iii) the payment requested by this requisition is due for work actually performed or materials or property actually supplied prior to the date of of this requisition less retainage.

Signature: _____ Date: _____
 Print Name: _____
 Title: _____

(To be completed by the DEP Division of Municipal Services)

Amount Requested: _____ Amount Approved: _____
 Signature: _____ Date: _____
 Print Name: Steven J. McCurdy
 Title: Director

BUREAU OF RESOURCE PROTECTION

PERIODIC PAYMENT FORM

(Contractor's Request)

LOAN NO. : DMS PROJECT NO.: CONTRACT NO.:				DESCRIPTION OF CONTRACT / TASK: REQUEST NO.: <u> 1 </u> PAYMENT PERIOD: From To CONTRACT SERVICE DATES: From To				
CONTRACTOR NAME & ADDRESS: <hr/> <hr/> <hr/>								
CONSULTANT ENGINEER NAME & ADDRESS: <hr/> <hr/> <hr/>								
<hr/> <hr/> <hr/>								
EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMMULATIVE REQUESTS		REMAINING BALANCE \$	
		%	\$		%	\$		
Construction	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	
MBE/WBE Subcontractors								
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	
<i>Total</i>	\$ -	#####	\$ -	\$0.00	####	\$ -	\$ -	
<i>I certify that to the best of my belief and knowledge, (i) that the attached invoices are in accordance with the specifications of the approved project plans; and (ii) that all work in place as of this date are in accordance with the terms of the above referenced Construction Contract.</i>			BY THE CONTRACTOR		<i>Certified by:</i> <hr/>		<i>Date Signed</i> 	
			BY THE CONSULTING ENGINEER		<i>Type Name and Title:</i> <hr/>		<i>Telephone</i> 	
					<hr/>			
					<hr/>			
			BY THE PROJECT INSPECTOR		<i>Recommended by:</i> <hr/>		<i>Date Signed</i> 	
					<i>Type Name and Title:</i> <hr/>		<i>Telephone</i> 	
					<hr/>			
			<hr/>					
			BY THE PROJECT INSPECTOR		THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE		<i>Date Signed</i> 	
SIGNATURE <hr/>		<i>Telephone</i> 						
PRINT NAME DEP/ BRP PROJECT INSPECTOR								

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RESOURCE PROTECTION

PAYMENT REQUISITION

(Consultant Engineer's Request and Certification)

LOAN NO. : _____ DMS PROJECT NO. : _____ CONTRACT No. _____	DESCRIPTION OF PROJECT: _____ REQUEST No. <u> 1 </u>
LEGAL NAME OF BORROWER: _____ _____	PAYMENT PERIOD: From To
CONSULTANT NAME & ADDRESS: _____ _____ _____	CONTRACT SERVICE DATES: From To

EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMULATIVE REQUESTS		REMAINING BALANCE \$
		%	\$		%	\$	
Technical Services	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
MBE/WBE Subcontractors							
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company C	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Totals	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -

The Borrower's Consultant Engineer identified herein certifies as follows: 1) the attached invoices and supporting documentation are for project costs for work actually performed or material or property actually supplied prior to the date of this requisition in conformity with the plans and specifications approved by the Department, or in the case of substantial deviations from the approved plans and specifications, the attached documentation demonstrates that all such deviations have been authorized and certified to by the Borrower or it's Consultant Engineer in accordance with M.G.L. c. 30, ss.39I and are project costs.

BY THE CONSULTING ENGINEER

Certified by:

Date Signed

Type Name and Title:

Telephone